

The opinion in support of the decision being entered today is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID M. PUTZOLU

Appeal 2006-3432
Application 09/417,527
Technology Center 2100

Decided: July 30, 2007

Before JAMES D. THOMAS, HOWARD B. BLANKENSHIP, and
MAHSHID D. SAADAT, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from a final rejection of claims 1-9 and 11-22, which are all of the claims pending in this application as claim 10 has been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

Appellant has invented a system and method for managing networks that use agents or mobile software modules to function as Application Layer Gateways (ALG) and to provide services to the network (Specification 1).

According to Appellant, an agent may move from node to node on a network and execute on the nodes to which it moves (Specification 4).

Claim 1 is representative of the claims on appeal and reads as follows:

1. A method for providing functionality on a network, the network comprising nodes, the method comprising:

moving an agent from a first device to a target device;

re-routing relevant traffic to the target device; and

performing application layer gateway functionality by the agent at the target device.

The prior art references relied upon by the Examiner in rejecting the claims on appeal are:

Jones	US 5,832,221	Nov. 3, 1998
Bhide	US 5,852,717	Dec. 22, 1998
Li	US 6,119,165	Sep. 12, 2000 (filed Nov. 17, 1997)
Yamamoto	US 6,282,563 B1	Aug. 28, 2001 (filed May 29, 1998)
Turek	US 6,460,070 B1	Oct. 1, 2002 (filed Jun. 3, 1998)

The Examiner rejected claims 1, 4, 5, 7, 9, 13, 15, 17, and 20-22 under 35 U.S.C. § 103(a) based upon the teachings of Yamamoto and Li.

The Examiner rejected claims 2, 11, and 18 under 35 U.S.C. § 103(a) based upon the teachings of Yamamoto, Li, and Bhide.

The Examiner rejected claims 3, 12, and 19 under 35 U.S.C. § 103(a) based upon the teachings of Yamamoto, Li, and Jones.

The Examiner rejected claims 6, 8, 14¹, and 16 under 35 U.S.C. § 103(a) based upon the teachings of Yamamoto, Li, and Turek.

Rather than reiterate the opposing arguments, reference is made to the Briefs and the Answer for the respective positions of Appellant and the Examiner.

We affirm.

ISSUE

The issue is whether Appellant has shown that the Examiner erred in rejecting the claims under 35 U.S.C. § 103(a). Appellant focuses on Yamamoto's transferring the messages to a temporary storage computer and alleges that the Examiner has not shown that such transfer is the same as the claimed "re-routing relevant traffic to the target device (Br. 10). The issue turns on whether the claimed re-routing relevant traffic to the target device reads on Yamamoto's sending messages from the source computer through the temporary storage server to the destination computer.

FINDINGS OF FACT

1. Appellant's claim 1 requires moving an agent from a first device to a target device and re-routing relevant traffic to the target device.

¹ Claim 14 is improperly dependent upon canceled claim 10.

2. The claim is not limited to a target device that is different from a “destination device.” In other words, the target device is not precluded from being the same as the destination device.
3. Yamamoto describes moving an agent from the source computer to a destination computer (Fig. 2; col. 5, ll. 43-49) wherein the agent may move directly to the destination computer or may be stored in a temporary storage for the agents (col. 6, ll. 53-55).
4. Yamamoto further describes the process for direct transfer 51 of messages to the destination computer as well as an indirect route 52-54 or re-routing through a temporary storage server when the destination computer is not ready (Fig. 6; col. 8, ll. 30-40).

PRINCIPLE OF LAW

1. Scope of claims

Absent an express intent to impart a novel meaning to a claim term, the words take on the ordinary and customary meanings attributed to them by those of ordinary skill in the art. *Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298, 67 USPQ2d 1132, 1135-36 (Fed. Cir. 2003). The claim construction analysis begins with the words of the claim. *See Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582, 39 USPQ2d, 1573, 1576 (Fed. Cir. 1996). Claims will be given their broadest reasonable interpretation consistent with the specification, and limitations appearing in the specification are not to be read into the claims. *In re Etter*, 756 F.2d 852, 858, 225 USPQ 1, 5 (Fed. Cir. 1985).

2. *Obviousness*

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. *See In re Kahn*, 441 F.3d 977, 987-988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), *In re Young*, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

Moreover, in evaluating such references it is proper to take into account not only the specific teachings of the references but also the inferences which one skilled in the art would reasonably be expected to draw therefrom. *In re Preda*, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

In identifying a reason that would have prompted a person of ordinary skill in the relevant field to combine the prior art teachings, the Examiner must show some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR Int'l. Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007).

ANALYSIS

Appellant's position with respect to the teachings of Yamamoto is that the prior art discloses re-routed relevant traffic which is destined for the target device (Br. 10), but never changes its destination since Yamamoto's messages are eventually sent to their initial destination (Reply Br. 2).

Determining the scope of the claims by looking at the words recited in the claims, we find that claim 1 merely requires a first device and a target device wherein relevant traffic is re-routed to the target device. In other words, the claim does not require changing the destination of relevant traffic or an

initial destination device whose traffic may be sent or re-routed to another device.

Giving the broadest reasonable interpretation to the claimed “re-routing relevant traffic to the target device,” we find that sending the messages from the source computer 13 through the temporary storage server 21 to the destination computer 14 does read on the subject matter recited in claim 1. Based on our analysis above and the fact that claim 1 does not require a change of destination for the traffic to be re-routed, we agree with the Examiner’s position that sending the messages through the temporary storage server 21, instead of direct transfer 51, is “re-routing relevant traffic.” While we disagree with Appellant’s position that the claims require re-routing the traffic away from its destination device and such limitation is absent in Yamamoto (Br. 10), we point to Appellant’s admission that Yamamoto “discloses re-routed traffic, and that the traffic has a destination device” (*id.*).

We further find the Examiner’s rationale for combining Yamamoto with Li based on enhanced security (Answer 5) to be reasonable. Absent any arguments presented by Appellant to challenge the combinability of the references, and to the extent claimed, we find that the combination of Yamamoto and Li suggests the subject matter recited in claim 1, other independent claims 9 and 17 which are argued based on the same requirement for re-routing the traffic to the target device (Br. 11), as well as claims 4, 5, 7, 13, 15, 20-22, dependent thereon.

With respect to the rejections of the remaining claims, Appellant relies on similar arguments discussed above and merely asserts that none of

the additionally applied references cures the deficiencies of Yamamoto with respect to “re-routing relevant traffic to the target device” (Br. 11-13). Accordingly, as Appellant fails to point to any error in the Examiner’s position with sufficient particularity, we remain unconvinced by Appellant’s arguments that the Examiner erred in rejecting claims 2, 3, 6, 8, 11, 12, 14, 16, and 18, and 19 under 35 U.S.C. § 103.

CONCLUSION

On the record before us, Appellant has failed to show that the Examiner has erred in rejecting the claims or that the initial rejection is not supported by a legally sufficient basis for holding that the combined teachings of the references would have suggested to the skilled artisan all of the claimed limitations. Accordingly, based on the teachings of the prior art outlined *supra*, we agree with the Examiner’s position that the claimed re-routing relevant traffic to the target device is taught by Yamamoto and sustain the rejection of claims 1, 4, 5, 7, 9, 13, 15, 17, 20-22 over Yamamoto and Li, as well as the rejections of claims 2, 3, 6, 8, 11, 12, 14, 16, and 18, and 19 over the various combinations of Yamamoto and Li with Bhide, Jones and Turek.

DECISION

The decision of the Examiner rejecting claims 1-9 and 11-22 under 35 U.S.C. § 103 is affirmed.

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Application 09/417,527

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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